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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/787,507
Filing Date: February 26, 2004
Appellant(s): BURY ET AL.

Salvatore A. Sidoti,
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 05/04/2009 and 07/13/2009 appealing from the Office action mailed 10/07/2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 3, 5-9, 12-17, 19-23 and 26-32 are rejected under 35 U.S.C. 102(e) as being anticipated by Anderson et al. (US 2003/0127026).

In ¶¶ 42, 149 and 153, Anderson et al. teach additives admixtures for cementitious compositions comprising the claimed polycarboxylate polymers (dispersant) in combination with one of the claimed set retarders and a polyhydroxyalkylamine such as tetra(hydroxyethyl)ethylenediamine, as strength improving accelerators.

In Table A, Anderson et al. teaches 20-30% of the polycarboxylate dispersant, 30-50% polyhydroxyalkylamine accelerators and 10 -20% of the set retarder, all of which are consistent with appellant's claimed ranges of about 0.5-80%, about 0.5-40% and about 0.5-40%, respectively.

In addition, Table A also teaches the additive admixture in terms of "General Dosage Ranges" for the three components used in cement: the dispersant (polycarboxylate polymers), the strength improving accelerator (polyhydroxyalkylamine) and set retarders, wherein 2-35 oz/cwt of dispersant (polycarboxylate polymers), 5-120 oz/cwt of strength improving accelerator (polyhydroxyalkylamine) and 0.25-8 oz/cwt of set retarders are used in the admixture per 100 pounds of cement.

Correspondingly, from on the "General Dosage Ranges", the % ranges for the three component of the admixture based to the total admixture components are 1.6% to 87% for the dispersant (polycarboxylate polymers), 12% to 98% of the strength

improving accelerator (polyhydroxyalkylamine) and 0.2 to 53% of set retarders, all of which are also consistent with appellant's claimed ranges of about 0.5-80%, about 0.5-40% and about 0.5-40%, respectively.

Thus, the requirements for rejection under 35 U.S.C. 102(e) are met.

(10) Response to Argument

Regarding the disclosure in ¶ 156 of a preferred range for the three admixture components, appellant is reminded that this is a preferred range and does not negative the broader ranges taught in Table A. It is well settled that anticipatory teachings are not limited to any particular embodiment/example. In re Boe, 148 USPQ 507 (CCPA 1966). Disclosed examples and preferred embodiments (even if the embodiments tested by appellant were preferred) do not constitute a teaching away from a broader disclosure. In re Susi, 440 F.2d 442, 169 USPQ 423 (CCPA 1971). The claimed admixture ratios are still within the teachings by Anderson.

Thus, contrary to appellant's arguments, it is clear that the accelerator in Anderson, which represents the strength improvement additive in present claims, is taught to be present at 30-50%, based on the "Approximate Solids Content" and 12% to 98%, based on the ratio from the "General Dosage Ranges".

Appellant argues that "Table A does not indicate a ratio of dispersant : accelerator : retarder for the early high-strength composition of admixtures" and that "Table A does not refer to ... the high early strength cementitious composition disclosed by Anderson." However, in ¶ 154 Anderson et al. teaches

"The dosages of the components of the high early-strength composition of admixtures, polycarboxylate high range water reducing dispersant, accelerator, and retarder, are governed by factors such as cement type and reactivity, ambient temperature, and concrete mixture proportions. The dosages of the components are summarized in Table A"

Thus, clearly, the admixture competent percentages and general dosage ranges of Table A are relevant to the teach of the high early strength cementitious composition of Anderson et al.

The Daczko Declaration confirming the preferable range taught in Anderson et al. does not negative the broader ranges taught in Anderson et al. that anticipate the present claims. Thus, the declaration is not persuasive.

Appellant argues that the "solids content ranges set forth in Table A of Anderson do not specify the weight percentage of the each component of the composition of admixtures", and that "the ranges set forth in Table A of Anderson actually represent the "approximate solids content" of each individual, commercially available admixture component, before the individual admixture components are added to the cementitious mixture." Even if the "approximate solids content" were not the relative weight percentage of the three components, the relative weight percentages are **calculated from** the "General Dosage Ranges" in cement: 1.6% to 87% for the dispersant (polycarboxylate polymers), 12% to 98% of the strength improving accelerator (polyhydroxyalkylamine) and 0.2 to 53% of set retarders, based on the total weight of

admixture components, still meets appellant's claimed ranges of about 0.5-80%, about 0.5-40% and about 0.5-40%, respectively.

Regarding the general dosage ranges that are taught in Table A of Anderson, appellant argues that "[r]egardless of the dosage ranges reported in Table A of Anderson, Paragraph [0156] still controls the amount of dispersant, accelerator and retarder to be included in the admixture composition." However, appellant is required that the ranges taught in ¶ 156 are only preferred ranges. As stated above, anticipatory teachings are not limited to any particular embodiment/example and preferred embodiments (even if the embodiments tested by appellant were preferred) do not constitute a teaching away from a broader disclosure. In re Susi, 440 F.2d 442, 169 USPQ 423 (CCPA 1971). The broader teach of ranges, 1.6% to 87% for the dispersant (polycarboxylate polymers), 12% to 98% of the strength improving accelerator (polyhydroxyalkylamine) and 0.2 to 53% of set retarders, based on the percent total of the three admixture components, calculated from the "General Dosage Ranges" of 2-35 oz/cwt of dispersant (polycarboxylate polymers), 5-120 oz/cwt of strength improving accelerator (polyhydroxyalkylamine) and 0.25-8 oz/cwt of set retarders are used per 100 pounds of cement, are consistent with appellant's claimed ranges of about 0.5-80%, about 0.5-40% and about 0.5-40%, respectively, and thus still meets the claims.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

KCE

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